Nos. 83-376 and 83-433

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

STANLEY YALKOWSKY, *et al.*,

Petitioners,

—against—

BENJAMIN SHEDLER, *et al.*,

Respondents.

STANLEY YALKOWSKY,

Petitioner,

—against—

J. HENRY NEALE, JR., *et al.*,

Respondents.

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF OF RESPONDENTS IRVING BANK CORPORATION, JOHN H. BARRY AND JOSEPH A. RICE IN OPPOSITION

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QUESTION PRESENTED FOR REVIEW

Was the United States Court of Appeals for the Second Circuit correct in affirming the dismissal, without leave to amend, of a 189 page pro se complaint (which contains vague and conclusory allegations of wrongdoing, extensive narrative, over 50 pages of exhibits, a motion to transfer to federal court all proceedings filed in state court by the pro se petitioner, and scandalous and other extraneous matter) for violating Rule 8 of the Federal Rules of Civil Procedure after petitioner failed to file an amended complaint as directed by the district court's conditional order of dismissal, the appeal from which was dismissed as being non-appealable?

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ON PETITIONS FOR WRITS OF
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**BRIEF OF RESPONDENTS
IRVING BANK CORPORATION, JOHN H.
BARRY AND JOSEPH A. RICE IN OPPOSITION**

STATEMENT OF THE CASE

A. Preliminary Statement.

This brief in opposition is submitted on behalf of respondents Irving Bank Corporation (a bank holding company headquartered in New York City),* Joseph A. Rice (President of Irving Bank Corporation) and John H. Barry (a Senior Vice President of Irving Bank Corporation). Respondents Irving Bank Corporation and Messrs. Rice and Barry are collectively referred to herein as "Irving".

Petitioners seek review of two related orders of the United States Court of Appeals for the Second Circuit entered in the Shedler and the Neale actions which resulted in the dismissal, pursuant to Rule 8 of the Federal

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* Irving Bank Corporation is a publicly held corporation. All of its domestic subsidiaries are wholly-owned except The Merchants National Bank and Trust Company of Syracuse (New York).

Rules of Civil Procedure, of the voluminous and rambling pro se complaint in Shedler.

As will be demonstrated herein, with respect to Irving, both petitions are completely frivolous and totally without merit.

The dismissals, both the conditional and the final, were based upon the inherent deficiencies of the Shedler complaint -- deficiencies which are readily apparent upon even the most cursory examination of the complaint and which were obviously apparent to the judges below.* Given petitioners' obvious failure to comply with basic federal pleading requirements, coupled with their refusal to comply with the district court's directions in Shedler, there

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* Although the Shedler complaint was submitted to the courts below, petitioners have apparently decided not to submit this rather voluminous document to this Court for examination. Had they done so, the nature and scope of the defects would have been crystal clear to the Court.

can be no question that the courts below were completely correct in dismissing the Shedler complaint.

Indeed, there is absolutely nothing about this case which warrants Supreme Court review: there is no conflict among the circuits; there are no important federal issues (constitutional or statutory) presented; and there are no important issues of statutory construction or interpretation presented.

To the contrary, the case involves the unequivocal failure of an attorney to comply with the federal rules of pleading. To the extent district and circuit courts have been faced with similarly defective pleadings, such pleadings have normally been dismissed (initially with leave to amend) for violating Rule 8 of the Federal Rules of Civil Procedure.

B. The Shedler Complaint.

Shedler is one of numerous state and federal suits and proceedings* instituted by Stanley Yalkowsky, an attorney appearing pro se, against Irving and Irving's wholly-owned subsidiary, Scarsdale National Bank and Trust Company and certain of its officers, directors and employees and its attorney (collectively referred to herein as "Scarsdale"), as well as a potpourri of other individuals, including Justices of the New York State Supreme Court and Appellate Division, the district attorney and assistant district attorney for Westchester County, numerous other state officials, Mr. Yalkowsky's ex-wife, her attorneys and her present husband.

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* According to papers filed by Mr. Yalkowsky in various state court proceedings, he has instituted over a dozen related suits and proceedings, many of which are against defendants named in Shedler.

Like the other suits and proceedings, Shedler grows out of a divorce action instituted by Mr. Yalkowsky against his ex-wife; and like the thrust of the other suits and proceedings, Mr. Yalkowsky seeks to attack judges, attorneys, state officials and anyone else who, in one way or another, became involved in his divorce action.

Although neither Irving nor Scarsdale was a party to Mr. Yalkowsky's divorce action, Scarsdale was drawn into it as a non-party witness and soon become embroiled in a discovery dispute with Mr. Yalkowsky. Irving was drawn into this matter solely because of its relationship with Scarsdale.

The complaint in Shedler is a long, rambling document which is approximately one inch thick and contains approximately 189 pages, including a five-page narrative introduction, over 50 pages of exhibits and a motion to transfer all of Mr.

Yalkowsky's pending state court suits and proceedings to federal court.

The complaint and motion portions of this document are in excess of 125 typewritten pages and contain over 750 paragraphs. Vague and conclusory allegations of fraud and other wrongdoing, often vitriolic and vituperative, are indiscriminately levelled at defendants and are scattered throughout the entire complaint without a clear indication of which allegations apply to which defendant or which defendant committed the particular acts complained of.

With respect to Irving, there is absolutely nothing in the Shedler complaint which links Irving to the sweeping and conclusory charges of wrongdoing; or which indicates which of the various allegations of wrongdoing, attributable to defendants generally, are directed at Irving; or which gives any basis whatsoever for

imputing the allegedly wrongful conduct to Irving; or which supports the conclusory allegations of fraud and conspiracy which are cavalierly bantered about in the complaint; or which ties Irving to the other defendants (other than Scarsdale). Indeed, if there is any commonality at all among the defendants, it would appear to be that they either dared to oppose Mr. Yalkowsky or acted contrary to his wishes -- action which is neither unlawful nor conspiratorial.*

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* Mr. Yalkowsky's penchant for attacking persons who do not accede to his demands is aptly illustrated by his unjustified attacks on Judges Griesa and Van Graafeiland. Mr. Yalkowsky has seen fit to include, in the Appendix to the petition in Neale, the text of documents and records relating to his complaints against these judges. Not only is such material irrelevant to the instant proceeding, but the disclosure of such material -- which is deemed to be confidential -- appears to be a clear violation of 28 U.S.C. § 372(c)(14).

Even where the Shedler complaint attempts to specifically discuss Irving and Scarsdale (identified in the table of contents as paragraphs 151-180 and 122-145, respectively), it totally fails to provide any notice of or basis for petitioners' federal claim against Irving. To the contrary, these paragraphs indicate that the gravamen of Mr. Yalkowsky's complaint against Irving is that Scarsdale allegedly failed to fully comply with several trial subpoenas served on it (but not Irving) during the course of Mr. Yalkowsky's divorce action; that Scarsdale allegedly mishandled two checks issued for the benefit of his daughter; and that liability should be imposed on Irving simply because Irving refused to accede to Mr. Yalkowsky's demand that it intervene on his behalf in his disputes with Scarsdale -- issues already

presented to and rejected by state courts.*

Why such conduct gives rise to a federal cause of action against Irving or entitles Mr. Yalkowsky and his parents and children to recover damages from Irving is not disclosed. Indeed, the Shedler complaint is devoid of any reference to specific federal laws or constitutional provisions which were allegedly violated by Irving or specific duties imposed by

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* Yalkowsky v. Yalkowsky, Index No. 11741/78 (Sup. Ct. Westchester Co. Order of Justice W. A. Walsh, Jr. dated October 15, 1981), aff'd as to Irving, 93 A.D.2d 834 (2d Dep't 1983); Yalkowsky v. Napolitano, Index No. 42060/82 (Sup. Ct. N.Y. Co. Order of Justice M. Rettinger entered December 28, 1982), aff'd as to Irving, 94 A.D.2d 683 (1st Dep't 1983), motion for leave to appeal pending.

In both cases, Irving successfully contended, inter alia, that it could not be held liable for not complying with trial subpoenas which were not addressed to it, which were not served on it and which did not seek documents or testimony from it; and, in any event, Mr.

(Footnote continued)

federal law or the constitution which Irving allegedly owed to Mr. Yalkowsky or his family members -- information which is unquestionably necessary for Irving to properly respond to the myriad of charges contained in the complaint.

Rather, after announcing that the district court has jurisdiction over the first cause of action (the only one directed at Irving) based upon 42 U.S.C. § 1983, petitioners broadly proclaim, at the end of page three of the introduction, that their complaint is "[g]rounded on the defendants' violation of all plaintiffs' constitutional rights and the defendants' interference with visitation and filial relationships." (Compl. p. III) (emphasis added).

(Footnote continued)

Yalkowsky could not pierce Scarsdale's corporate veil and impose liability on Irving for the alleged improper acts of its subsidiary.

Nowhere, however, does the Shedler complaint identify the provisions of the constitution or the constitutional rights which Irving has allegedly violated; and nowhere does the Shedler complaint identify the constitutional provision which gives rise to, or any federal statute which provides, a federal cause of action against a non-governmental entity (such as Irving) for the "interference with visitation and filial relationships" -- whatever that means in the context of this action against Irving.

Nevertheless, based upon these unspecified constitutional rights, petitioners claim they are entitled to recover $325 million in damages from Irving and the other defendants.

C. Proceedings Below.

On October 4, 1982, a pre-trial conference was held before Judge Griesa

of the United States District Court for the Southern District of New York. As the transcript of that conference indicates,* it was clear to Judge Griesa -- as it should be to anyone who peruses petitioners' complaint -- that it is an exceedingly voluminous and disjointed document.

Based upon his examination of the complaint, Judge Griesa correctly concluded that it violated federal rules of pleading. He thereupon orally dismissed petitioners' complaint but granted leave to file an amended complaint provided that it be submitted to him for approval prior to service.

The oral order was thereafter embodied in a written order dated October 12, 1982 ("October 12 Order"), the text of which is

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* The text of the transcript is included in the Appendix to the petition in Shedler at pp. 18A-26A.

included in the Appendix to the petition in Shedler at pp. 1A-3A. Significantly, in the October 12 Order, Judge Griesa specifically acknowledged that he had "examined the complaint in the presence of counsel for all parties" at the October 4 conference.

Mr. Yalkowsky thereafter pursued two separate but related courses of action: he appealed from Judge Griesa's conditional order and he filed another complaint entitled Yalkowsky v. Neale, et al., 82 Civ. 8748 (TPG) (S.D.N.Y.). The document is styled "Amended Complaint -- Plaintiff's Demand For Jury Trial;" was filed as a separate action; names some, but not all, of the defendants named in the Shedler action;* and is once again based primarily upon Scarsdale's alleged failure to comply with

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* Neither Irving Bank Corporation nor Joseph A. Rice were named as defendants in Neale.

the subpoenas served by Mr. Yalkowsky in his divorce action.

Because Neale was related to Shedler, it was transferred to Judge Griesa pursuant to the local rules of the United States District Court for the Southern District of New York.

In an opinion dated February 2, 1983 bearing the captions of both Shedler and Neale (the text of which is included in the Appendix to the petition in Shedler at pp. 4A-14A), Judge Griesa ordered that the complaints in both actions be dismissed without further leave to amend. Significantly, with respect to the Shedler complaint, Judge Griesa stated that it was a "discursive mass of narrative [which] obviously included a great bulk of extraneous matters," concluding that "[t]he suit, as filed, was simply an abuse." Id. at 6A.

Mr. Yalkowsky appealed from these orders as well.

On appeal, the issues were fully briefed, with Mr. Yalkowsky submitting lengthy memoranda in both cases. In addition, the complaints were submitted to the Second Circuit as part of the records on appeal.

The Second Circuit rejected Mr. Yalkowsky's contentions in both appeals. In an order dated June 17, 1983 bearing the Shedler caption (Appendix to Shedler petition at pp. 15A-17A), the Second Circuit dismissed the appeal from Judge Griesa's October 12 Order because it "was not final and therefore not appealable." However, in a second order of the same date bearing the Neale caption (Appendix to Neale petition at pp. 1A-3A), the Second Circuit, after acknowledging that Judge Griesa had dismissed both the Shedler action (referred to by its Southern District Docket No. 82 Civ.

5665) and the Neale action without further leave to amend, affirmed both dismissals "substantially for the reasons set forth by the district court in its several orders."*

For the reasons set forth below, both petitions should be denied.

ARGUMENT

I

PETITIONERS HAVE FAILED TO DEMONSTRATE ANY VALID BASIS FOR GRANTING CERTIORARI

Contrary to petitioners' assertions, the petitions with respect to the dismissal of the Shedler complaint do not present any issues of constitutional proportions and do not present any important issues of federal statutory construction

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* Although petitioners moved in both cases for rehearing, and suggested that the actions be reheard en banc, the Second Circuit denied the motions by order dated August 8, 1983.

or interpretation. Indeed, they do not present any important issues at all.

Rather, the sole question presented by the petitions herein is whether the dismissal pursuant to Rule 8 of the Federal Rules of Civil Procedure of a vague, conclusory, 189 page pro se complaint, which is replete with scandalous and other extraneous matter but which fails to provide adequate notice of the federal claims asserted, is worthy of Supreme Court review -- particularly where the courts below provided the opportunity to amend the fatally defective pleading but petitioners refused to do so.

There is no disagreement among the federal courts as to the propriety of dismissing a pleading (initially with leave to amend) which fails to comply with Rule 8's mandate that a complaint "be simple, concise and direct" and contain

a "short and plain statement" of the claims asserted.* Indeed, federal courts have not hesitated in dismissing pleadings which are excessively long; which contain extensive exhibits and appendices, detailed evidentiary matter and similar extraneous material; which are prolix and replete with argumentative, conclusory and scandalous matter; which fail to clearly specify the wrongful acts committed by, or the

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* Fed. R. Civ. P. 8 states in pertinent part:

> "(a) A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim, or third party claim shall contain . . . (2) a short and plain statement of the claim showing that the pleader is entitled to relief . . .
>
> * * *
>
> "(e)(1) Each averment of a pleading shall be simple, concise and direct."

statutes or laws violated by, each defendant; and which are completely devoid of fundamental information necessary to frame a proper response.*

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* Nevijel v. North Coast Life Insurance Co., 651 F.2d 671 (9th Cir. 1981) (48 page complaint plus 14 pages of addenda and 9 pages of exhibits); Agnew v. Moody, 330 F.2d 868 (9th Cir.), cert. denied, 379 U.S. 867 (1964) (55 page complaint plus exhibits); McCann v. Clark, 191 F.2d 476 (D.C. Cir.), cert. denied, 342 U.S. 872 (1951) (complaint filled 14 printed pages of record and contained scurrilous matter); Crumpacker v. Civiletti, 90 F.R.D. 326, 330 (N.D. Ind. 1981) (pro se complaint, which spanned 53 legal size pages and attacked 64 defendants, including federal judges, United States attorneys and financial institutions, was held to be "overly long" and "far beyond any reasonable length" and placed "'placed undue burden on court and counsel to determine how plaintiff is here and why'...."); Echols v. Voisine, 506 F.Supp. 15, 16 (E.D. Mich. 1981), aff'd without opinion, 701 F.2d 176 (6th Cir. 1982) (vague allegations of "ongoing violations of [pro se plaintiff's] civil rights, apparently in the form of an ever widening conspiracy to discriminate against him," originally set forth in a 45 page complaint but were reduced to 14 pages and 24 pages of attachments);

(Footnote continued)

Undeniably, the Shedler complaint, which suffers from virtually all of these defects, completely and utterly fails to comply with

(Footnote continued)

Boruski v. Stewart, 381 F. Supp. 529, 533 (S.D.N.Y. 1974) ("A prolix, confusing, redundant, protracted pleading such as the 125 page document herein is subject to dismissal under this Rule [8(e)(1)] on that ground alone."); Prezzi v. Berzak, 57 F.R.D. 149 (S.D.N.Y. 1972) (pro se complaint, which was 53 legal sized pages and included exhibits and motion papers, violated Rule 8); Johns-Manville Sales Corp. v. Chicago Title & Trust Co., 261 F. Supp. 905 (N.D. Ill. 1966) (single count complaint covering 39 pages and containing over 20 exhibits); Benner v. Philadelphia Musical Society, Local 77, 32 F.R.D. 197 (E.D. Pa. 1963) (26 page complaint); cf. Ausherman v. Stump, 643 F.2d 715 (10th Cir. 1981) (63 page complaint with 9 pages of attachments and containing a "rambling narration of a discord" between the parties, "commingled" causes of action and a table of contents, was held to violate Rule 8).

The following observation, set forth in Shakespeare v. Wilson, 40 F.R.D. 500, 502 (S.D. Calif. 1966), would appear to be particularly applicable to the case at bar:

> "This action, filed in pro. per., is a typical example of the

(Footnote continued)

Rule 8. The filing of an amended pleading, as directed by the district court, would have been the proper course to pursue. Instead, petitioners refused to comply with the district court's order and improperly sought appellate review, attacking, in the process, federal judges merely because they rendered adverse rulings. Such conduct, to quote Judge Griesa, is "simply an abuse."

(Footnote continued)

> kind of action being filed with increasing frequency under the provisions of the Civil Rights Act of 1871, 42 U.S.C.§§1981-1986. Having been defeated in state court proceedings and being unhappy and somewhat humiliated and frustrated by the results of such proceedings, these persons lash out at judges, attorneys, witnesses, court functionaries, newspapers and anyone else in convenient range, terming all of them corruptly evil and charging them with perjury and conspiracy in a last desperate effort to re-litigate the issues on which they have once lost and hoping to secure sizeable damages to boot."

Quite clearly, further review is neither necessary nor warranted in this matter.

II

IRVING IS ENTITLED TO DAMAGES PURSUANT TO SUPREME COURT RULE 49.2

Rule 49.2 states:

> "When an appeal or petition for writ of certiorari is frivolous, the Court may award the appellee or the respondent appropriate damages."

As demonstrated above, it is unequivocably clear that the petitions in Shedler and in Neale (to the extent it is directed at the Shedler complaint) are completely frivolous and are totally without merit. Accordingly, Irving is entitled to recover damages incurred herein. Tatum v. Regents of the University of Nebraska - Lincoln, ____ U.S. ____, 103 S.Ct. 3084 (1983); cf. Gullo v. McGill, ____ U.S. ____, 103 S.Ct. 2445 (1983).

CONCLUSION

For the reasons set forth herein, the petitions for certiorari should be denied, and Irving should be awarded damages pursuant to Rule 49.2.

Respectfully submitted,

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